

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 454 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

STATE OF GUJARAT

Versus

SAIYADBEN ALIAS SAIYADI DODARISAIKUBHAI

Appearance:

Shri S.T.Mehta, Additional Public Prosecutor, for the Appellant - State.

Shri M.J.Buddhabhatti, Advocate, for the Respondent.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 25/09/96

ORAL JUDGEMENT

Blissful ignorance of the law declared by this court in its rulings in the case of STATE OF GUJARAT v.

BUTASING INDRASING reported in 1990 (1) 31 (1) Gujarat Law Reporter at page 26, in the case of STATE OF GUJARAT v. GULAMNABI reported in 1990 (1) 31 (1) Gujarat Law Reporter at page 60 and in the case of STATE OF GUJARAT v. SYPOI ALAMBHAI JAMALBHAI reported in 1990 (1) 31 (1) Gujarat Law Reporter at page 122 on the part of the learned Judicial Magistrate (First Class) of Court No.1 at Jamnagar has resulted in mockery and travesty of justice in the trial of Criminal Case No.814 of 1987. His judgment and order of acquittal passed therein is under challenge in this appeal by leave of this court under Section 378 of the Code of Criminal Procedure, 1973 (the Code for brief). By his impugned judgment and order, the learned trial Magistrate has acquitted the respondent herein of the offence punishable under Section 142 of the Bombay Police Act, 1951 (the Act for brief).

2. The facts giving rise to this appeal move in a narrow compass. The respondent herein was externed from the limits of Jamnagar, Junagadh and Rajkot for a period of two years by one order passed on 7th August 1986 under Section 56 of the Act. He appears to have re-entered Jamnagar on 28th January 1987 at about 12.15 p.m. during the currency of the aforesaid order passed under the aforesaid statutory provision. Thereupon, the necessary complaint charging the respondent herein of the offence punishable under Section 142 of the act was lodged. On completion of the investigation, the necessary chargesheet was submitted to the Court of the Chief Judicial Magistrate at Jamnagar. It came to be registered as Criminal Case No.814 of 1987. It appears to have been assigned to the learned Judicial Magistrate (First Class) of Court No.1 at Jamnagar for trial and disposal. The plea of the respondent as the accused was recorded on 24th October 1991. He did not plead guilty to the charge. It appears that one panch witness was examined as prosecution witness No.1 at Exh.7 on the record of the case. He appears to have turned hostile. It appears that the prosecution sought adjournment from time to time for examination of the other witnesses at trial including the complainant. It appears that the learned trial Magistrate got exasperated presumably by the lethargy of the prosecution agency on account of non-examination of witnesses including the complainant. An application was made on 8th October 1992 by the learned Assistant Public Prosecutor for grant of time for re-issue of summons for attendance of witnesses. Its copy is at Exh.7-A on the record of the case. As pointed out hereinabove, the learned trial Magistrate appears to have got exasperated and he therefore rejected the said application for re-issue of summons for attendance of

witnesses including the complainant. Thereafter, he proceeded with his judgment and order acquitting the respondent as the accused of the offence with which he stood chargesheeted. The aggrieved prosecution agency has thereupon invoked the appellate jurisdiction of this court after obtaining leave of this court under Section 378 of the Code for questioning the correctness thereof.

3. This court in its aforesaid rulings has clearly pointed out the court's powers even if the prosecution agency shows lethargy in producing witnesses at trial. It has been emphasised that it is the duty of the court to do justice. It is a settled principle of law that it is the duty of the court to see that no person is fastened with any penal liability under the criminal law unless the guilt is brought home beyond reasonable doubt. It is equally well settled that it is also the duty of the court not to allow any offender to escape the clutches of law. Any casual, cavalier, cursory or perfunctory approach on the part of even the criminal court cannot be countenanced. The offender, if found guilty of the offence with which he is charged or chargesheeted, has to be brought to the book by imposition of a suitable sentence according to law. He cannot be allowed to escape such punishment if he is found guilty. He can be found guilty provided the prosecution gets an opportunity to produce its witnesses to bring guilt home to the accused. Even if the prosecution agency shows lethargy in producing witnesses at trial, the court has to activate itself and to take appropriate measures for attendance of witnesses in view of the aforesaid binding rulings of this court.

4. The principle of law enunciated in the aforesaid binding rulings of this court has been reaffirmed and reiterated with all vehemence by the Division Bench of this court in its recent ruling in the case of STATE OF GUJARAT v. RAJENDRASINH RAMJANSINH reported in III (1996) Current Criminal Reports at page 152. My learned Brother K.J.Vaidya, J. speaking for the Division Bench has re-emphasised the role the court has to play even when the prosecution agency shows lethargy in conducting the trial.

5. The approach shown by the learned trial Magistrate in the case in question is contrary to the aforesaid rulings of this court and cannot therefore be sustained in law.

6. At this stage, learned Advocate Shri Buddhhabhatti for the respondent has submitted that the offence is

stated to have occurred on 28th January 1987 and more than nine years have rolled by since then and it would not be desirable to upset the impugned judgment and order of acquittal passed by the learned trial Magistrate on the ground that the court did not exercise its powers of securing attendance of witnesses including the complainant and to remand the matter to the trial court for restoration of the proceeding and for proceeding according to law. I think the offence cannot be said to be a trivial offence. The minimum punishment prescribed therefor is six months. It cannot be gainsaid that the externment proceedings are undertaken with a view to providing safety to the people residing in the areas from which the delinquent is ordered to be externed. If during the currency of the externment order the delinquent re-enters the area without any valid permission, it cannot be gainsaid that the purpose of prescribing the period of externment would be frustrated if the offender is not suitably dealt with. I am therefore of the opinion that passage of time would not mitigate the offence and would not militate against the fresh trial when the trial is found to be tainted with illegality.

7. In view of my aforesaid discussion, I am of the opinion that the impugned judgment and order of acquittal passed by the learned trial Magistrate cannot be sustained in law. It has to be quashed and set aside. The matter deserves to be remanded to the Court of the Chief Judicial Magistrate at Jamnagar for restoration of the proceeding to file and for causing its proceeding according to law. It would be open to the learned Chief Judicial Magistrate at Jamnagar to conduct the trial himself after restoration of the proceeding or to assign the case to some other competent Magistrate.

8. In the result, this appeal is accepted. The judgment and order of acquittal passed by the learned Judicial Magistrate (First Class) of Court No.1 at Jamnagar on 22nd October 1992 in Criminal Case No.814 of 1987 is quashed and set aside. The matter is remanded to the learned Chief Judicial Magistrate at Jamnagar for restoration of the proceeding to file and for the fresh trial according to law in the light of this judgment of mine.

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